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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
10/646,992	08/21/2003	Michael J. Mahoney	12903-2	1129
	7590	10/05/2004	EXAMINER	
James M. Duncan P.O. Box 11172 Bakersfield, CA 93389-1172			ARYANPOUR, MITRA	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/646,992

Applicant(s)

MAHONEY, MICHAEL J.

Examiner

Mitra Aryanpour

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 6/1/04 and 6/29/04.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Dell et al (D477,376) in view of Sertich (3,466,040) and Krive (4,629,181) or Findlay (5,80,129).

Regarding claim 1, O'Dell et al shows a rotatable base for training proper foot placement and movement of the batter (see figures 1 and 7). As best seen in figure 7, O'Dell et al shows that a batter, places a first foot on the baseball training device, assuming a batting stance, placing a second foot approximately shoulder-width apart from the first foot and cocking a bat above the shoulder corresponding with the first foot (best seen in figure 7). O'Dell et al's design patent does not expressly show the shifting of weight so that the majority of the batter's weight is supported by the first foot, and swinging the bat, and simultaneously rotating the first foot on the baseball training device but not moving the first foot off of the baseball training device so that the batter's hips rotate in the same direction as the bat, and completing the swing. Sertich shows a rotatable base having upper and lower plates (200 and 100 respectively) for positioning a first foot (rear foot) on the base, wherein between the two plates is a Teflon washer (160) comprising two concentrically arranged lubricant rings connected by four tangential radials of the same material. The washer (160) permits smoother rotation of the raised plate on the axial casing by reducing friction between plates (200 and 100). Sertich's training device is used to practice

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batting and more particularly to learn to pivot on the rear foot properly during the batting swing, the player places his foot on upper foot plate (200), the player goes through the motion of swinging the bat. while the player is going through the motion of a swing, his rear foot pivots causing upper plate (200) to rotate on casing (150). Base plate (100) remains stationary throughout the swing motion. In view of Sertich it would have been obvious to applying the same steps, in order to use the rotatable base of O'Dell et al, the motivation being to teach the proper use of the rear or first foot, which in turn leads to the proper desired footwork for desired hitting technique and form. With regards to the hip rotating in the same direction as the bat, this is a step that would inherently occur when swinging the bat (see above reference in its entirety).

O'Dell et al also does not disclose expressly the specific details for forming the rotatable base. Krive shows an integrated pivoting unit comprising a first flange (top plate 42) and a second flange (bottom plate 40) in facing relation, the first flange pivotally attached at its center to the center of the second flange (see figure 1, the center section of the bearing assembly 38), a bearing housing (the central section of the bearing assembly 38) defined wherein the first flange (top plate 42) is pivotally attached to the second flange (bottom plate 40) for holding ball bearings (46), the first and second flange each having an outward facing surface; a foot-engaging member (24 has foot support means 26 and 28 attached thereon) attached with fastening means (aperture 48 and screws not shown) to the outward facing surface of the first flange (top plate 42); a ground-engaging member (base 22) attached with fastening means (aperture 48 and screws not shown) to the outward facing surface of the second flange; a sealing member (the broadest reasonable interpretation of a sealing member would include circular central race 44) encircling the bearing housing. It is well known to include lubrication within

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the race or housing for the ball bearings in order to reduce friction. In the event applicant disagrees, Findlay shows a swivel mounting assembly (100) for a chair, wherein the swivel mounting assembly (100) includes a lower support plate (102) provided with a circular recess, or race (104) in which are located a series of ball bearings (106). An upper swivel-plate (108) is rotatably mounted on the lower support plate by means of a central pivot shaft (112) and the ball bearings (106), which ball bearings are also received, or seated, in a circular recess, or race, (110) formed in the swivel-plate (108), as best seen in FIG. 15, which race (110) is coextensive with the lower race (104). As can be seen in FIG. 15, the upper and lower plates (102, 108) form an annular gap (114) therebetween, through the annular gap, it is possible for sand or dirt to enter into the interior of the swivel-mounting assembly. Sand or dirt in the interior of the swivel-mounting assembly will adversely affect the ball bearings and the rotational movement of the upper plate (108) relative to the lower plate. The dirt and sand not only increases the dynamic friction between the ball bearing (106) and the race (110), but also may physically damage the ball bearings themselves, such that they are no longer perfectly spherical, which also impedes, or may even prevent, the rotation of the upper swivel-plate (108). Findlay provides an annular foam ring 116 that completely covers or closes off the annular gap 114, so that substantially no sand, dirt, or other foreign particles are allowed to enter into the interior of the swivel-mounting assembly. The annular foam ring must be of a material that provides reduced dynamic and static frictional contact, since the annular foam ring is in abutting contact with surface-portions of the upper swivel-plate 108, as seen in FIG. 15 (see column 7, 1st and 2nd paragraphs). In view of Krive and/or Findlay, it would have been obvious to provide an annular foam ring for the modified base of O'Dell et al the motivation being to prevent foreign

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particles from entering the mounting assembly and to provide reduced dynamic and static frictional contact.

Regarding claim 2, O'Dell et al as modified in view of Findly above shows the friction inducing member is a rubber o-ring (the broadest reasonable interpretation of rubber o-ring would include the annular foam ring 116 of Findly).

Regarding claim 3, O'Dell et al as modified above shows the fastening members can be screws (shown by Krive; see column 5, lines 28-32), bolts (shown by Sertich; see column 3, lines 14-18).

Regarding claim 4, O'Dell et al shows the foot-engaging member to be round.

Regarding claim 5, As best seen from the figures, O'Dell shows the upper and lower members to be the same size and shape (see figures 1-6).

Regarding claim 6, O'Dell et al as modified above does not disclose expressly the exact size of the training device, as best seen from the figures, it appears that the base of O'Dell falls within the claimed range. Should applicant disagree, a change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955), and it would have been obvious to do so here.

Regarding claim 7, note the rejection of claims 1, 2, 4 and 5. Additionally O'Dell et al shows a cover material attached to the second surface of the foot engaging member. O'Dell et al does not expressly disclose and to the second surface of the ground-engaging member. It would have been obvious to one having ordinary skill in the art at the time the invention was made *to provide a cover for the ground-engaging member of O'Dell et al*, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. St.

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Regis Paper Co. v. Bemis Co., 193 USPQ 8 (7th Cir. 1977).

Regarding claim 8, note the rejection for claim 5.

Regarding claim 9, note the rejection for claim 6.

Response to Arguments

3. Applicant's arguments with respect to claims 1-9 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 703-308-3550. The examiner can normally be reached on Monday - Friday 9:00 to 5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MA
30 September 2004



MITRA ARYANPOUR
PATENT EXAMINER